

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

A final award was entered in this matter by Assistant Director Brad E. Avery on July 23, 1996. The Award in Docket No. 184,177, date of accident February 3, 1988, found the Fund responsible for full payment of the award. Claimant's entitlement to future medical benefits was awarded upon presentation to and approval by the director. The Award was timely appealed to the Appeals Board pursuant to K.S.A. 44-551(b)(1), as amended. The matter is presently set for oral argument before the Appeals Board.

This particular proceeding was a post award request for medical treatment that came before the Administrative Law Judge on a Form E3 Application for Preliminary Hearing. Specifically the claimant requested the appointment of an authorized physician for the purpose of managing claimant's need for pain medication. The Administrative Law Judge authorized claimant to choose her own treating physician who was authorized to provide conservative, non-invasive treatment. The Fund was ordered to pay the cost of the medical treatment.

Before the Appeals Board addresses the merits of this appeal, the question as to whether the Appeals Board has jurisdiction to review this preliminary hearing Order must be answered. The Appeals Board has jurisdiction to review a preliminary hearing Order if one of the specific issues listed in K.S.A. 44-534a, as amended, is disputed. Jurisdiction is also granted if the appellant alleges the Administrative Law Judge exceeded his or her jurisdiction in granting or denying the relief requested. See K.S.A. 44-551, as amended. The issue raised by the Fund is not one of the issues listed as a jurisdictional issue in K.S.A. 44-534, as amended. Furthermore, the Administrative Law Judge has authority pursuant to the preliminary hearing statute, K.S.A. 44-534a, as amended, to grant or deny a request for medical treatment. Accordingly, the Appeals Board concludes that the Administrative Law Judge did not exceed his jurisdiction when he granted claimant's request for medical treatment. Therefore, the Appeals Board finds it does not have jurisdiction to review this preliminary hearing order.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that this appeal should be, and is hereby, dismissed and the Order of Administrative Law Judge Bryce D. Benedict dated October 4, 1996, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of November 1996.

BOARD MEMBER

c: John J. Bryan, Topeka, KS
 Billie E. Newman, Topeka, KS
 Matthew Crowley, Topeka, KS
 Jeff K. Cooper, Topeka, KS
 Bryce D. Benedict, Administrative Law Judge
 Philip S. Harness, Director